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ABSTRACT

This report to the United Nations Convention on the Rights of the Child contains observations of the World Organisation Against Torture (OMCT) concerning the application of the Convention by Democratic Republic of the Congo (DRC). The report's introductory summary asserts that although the DRC has ratified the Convention and other international instruments condemning the practice of torture, torture seems to be systematically used in the DRC. The report notes that the current conflict in the DRC has resulted in large numbers of children being recruited/forced into armed service, killed, or displaced. Considerable discrimination is evident against girls, displaced children, refugee children, child soldiers, street children, and ethnic minority children. The report presents observations and recommendations in the following areas: (1) definition of a child; (2) torture and other cruel, inhuman, or degrading treatment or punishment; (3) protection against all forms of violence, particularly sexual abuse; (4) children in conflict with the law; and (5) rehabilitation. The report's conclusion maintains that the state's report demonstrates its awareness of obstacles to applying the Convention, but has omitted important information, especially concerning ill-treatment and cases of torture. The report concludes with a summary of observations and recommendations by the U.N. Committee on the Rights of the Child--Democratic Republic of the Congo, including those related to legislation; budget allocation; cooperation with nongovernmental organizations; civil rights and freedom; family environment and alternative care; basic health and welfare; education, leisure, and cultural activities; and special protection. (Contains 61 footnotes.) (KB)

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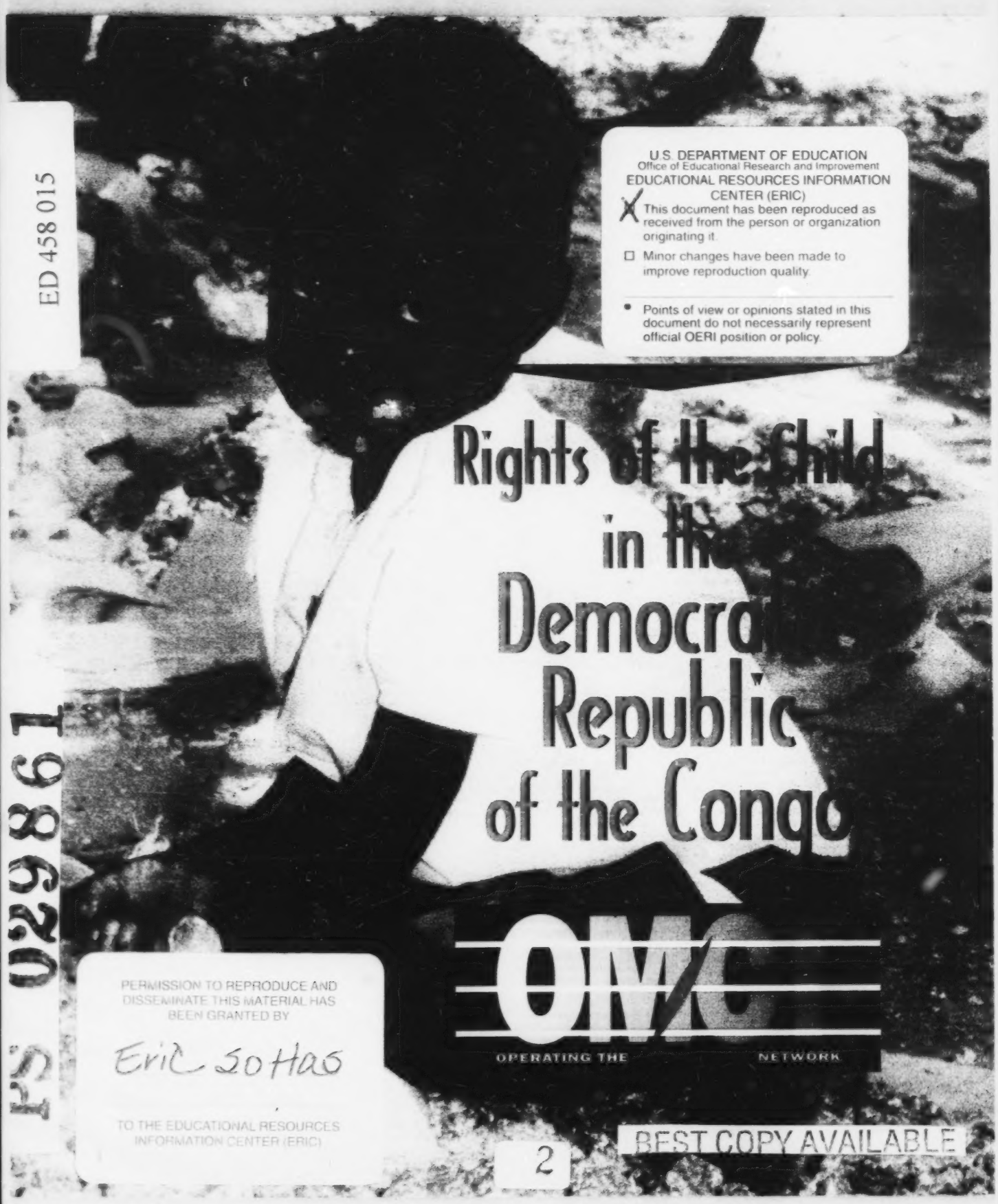

Rights of the Child in the Democratic Republic of the Congo

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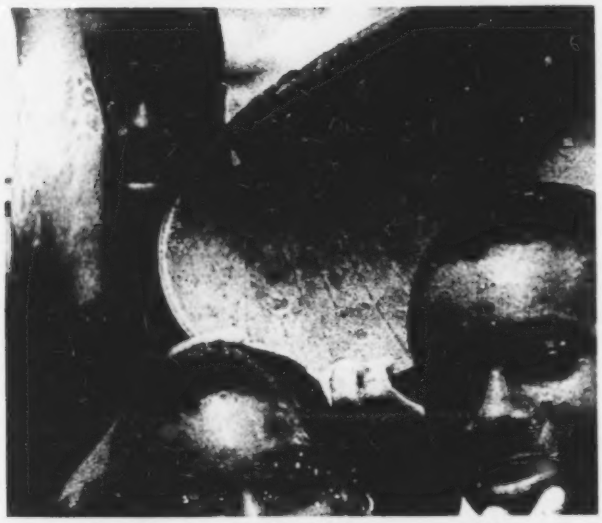

Rights of the Child in the Democratic Republic of the Congo

OMC

OPERATING THE SOS-TORTURE NETWORK

The aim of OMCT country reports are to prevent torture

In its reports on children's rights, OMCT aims to analyse national law in terms of the international commitments that a government has made. For example, in some countries families are not informed when their child is detained and this removes a precious safeguard against abuse. The absence of such safeguards facilitates situations where the torture of children can and does occur.

In other words, the reports aim to point out where, often unknowingly, legislation facilitates grave abuses against children.

The legal analysis is supported, where possible, by urgent appeals on the torture of children documented by OMCT. These urgent appeals (OMCT intervenes almost daily on such cases) are the foundation of all our work.

The reports are not legal semantics for their own sake, but represent, in addition to the urgent actions, another side of our strategy to end torture. The reports include meaningful and feasible recommendations for legal reform aimed at reducing the incidence of child torture.

The reports are presented to the United Nations Committee on the Rights of the Child which uses them to analyse how well a country is fulfilling its international commitments with regard to children. Their recommendations on the issue of torture, drawing from OMCT's reports, send a strong message from the international community on the need for action to end the torture of children.

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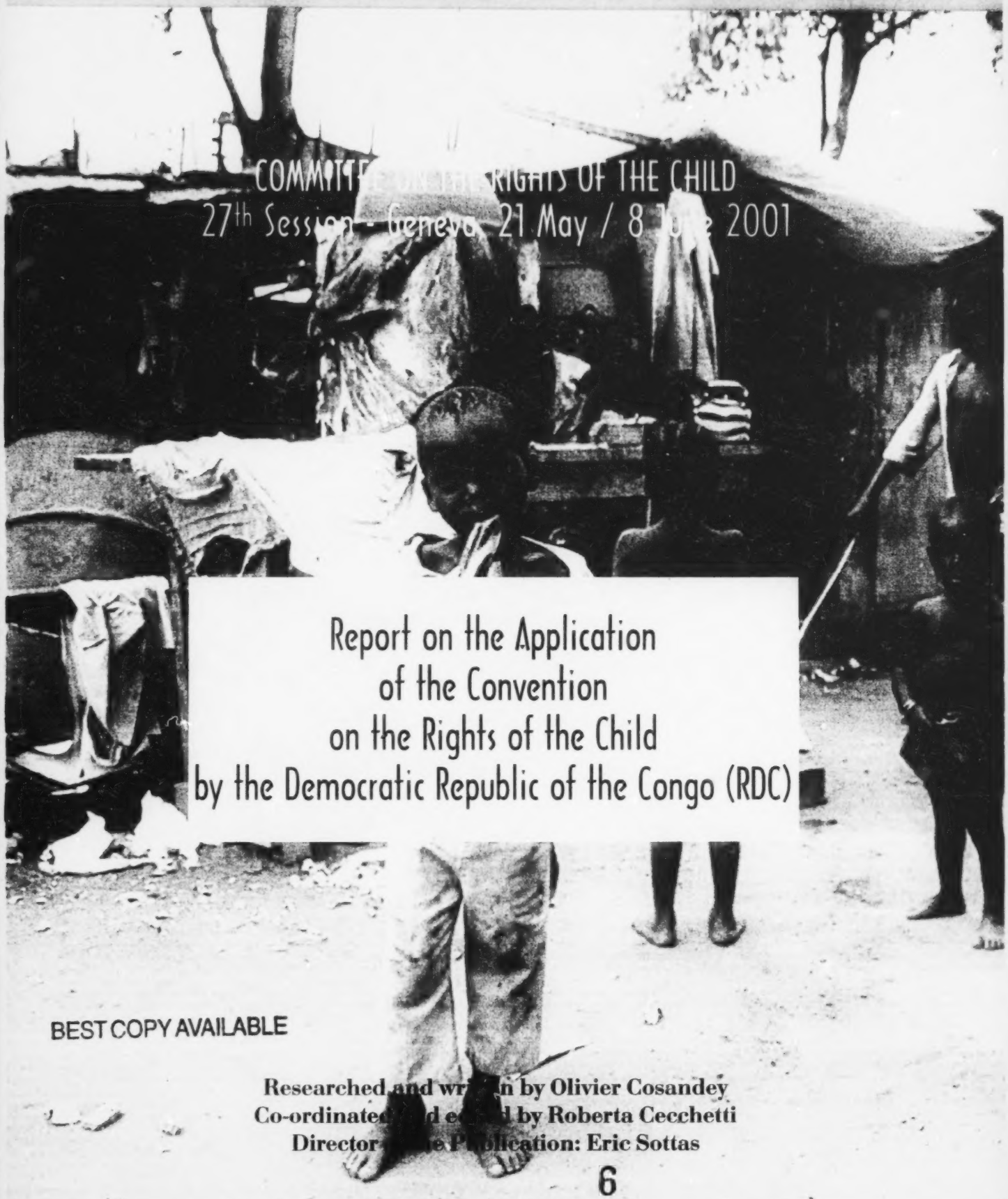

Report on the Application of the Convention on the Rights of the Child by the Democratic Republic of the Congo (RDC)

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Researched and written by Olivier Cosandey
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Preliminary Observations

The Democratic Republic of the Congo (hereinafter DRC) ratified the Convention on the Rights of Children (hereinafter Convention), on 27 September 1990 which came into force on 27 October of the same year.

The DRC is also party to other international instruments which work for Human Rights and condemn the practice of torture, especially the International Covenant on Civil and Political Rights and the Convention against torture and other cruel, inhuman or degrading treatment or punishment.

However, it is to be noted that certain legal or institutional measures that apparently conform to the Convention are insufficient or represent an obstacle to efficient protection of the rights of children as provided for in the Convention.

From a legal point of view, the text which acts as a constitution is the Constitutional Act of Transition (Acte constitutionnel de Transition, hereinafter ACT) adopted on 9 April 1994. There is a draft Constitution, but it has yet to be adopted.

General Observations on the situation of children in the Democratic Republic of the Congo (DRC)

On the basis of information in its possession, OMCT is deeply concerned by the fact that torture seems to be systematically used in the DRC[1]. Although the state is not the only organ using violence against children in the DRC, and despite the fact that part of the territory is occupied, it is its responsibility to ensure that the rights stated in the Convention are implemented. Indeed, in article 4 of the Convention, the state parties commit themselves to implement the rights that are recognised in this Convention. It is to be noted that the Government is under the obligation to prevent, pursue and punish all

1 - Special Rapporteur Report on the Situation of Human Rights in the DRC, A/55/403 para 55.

Human Rights violations committed by state officials or non-state agents.

2.1 War in the East of the country

Since August 1998, the DRC has been in the grip of several armed conflicts. The Special Rapporteur commented on the situation in the DRC, saying that some conflicts are international ones, others are internal and some are national conflicts that have developed into international ones. [...] The conflict which started on 2 August 1998 following the invasion of the Democratic Republic of the Congo by Rwanda is, to this day, one of the most serious[2].

The Special Rapporteur goes on to say that almost 1.3 million people have allegedly been displaced; some 280,000 others have allegedly been forced into exile, and a large part of the population allegedly lives in a situation of scarce food resources[3]. The majority of this population is composed of women and children.

President Kabila declared a state of emergency in the provinces of Equateur, Katanga, North Kivu, South Kivu, Maniema and Eastern Province. This decision was officially made due to the danger represented by the aggression and invasion of the Democratic Republic of the Congo by foreign armies[4]. This Decree-Law, signed on 2 January 1999, gives the army competence to replace civil authorities, seize private goods, and to recruit civilians if it is to benefit, in a direct or indirect way, the national defence and the upholding of security and public interest[5]. It also extends the competence of the military Court (COM, Cour d'ordre militaire) to encompass civilian affairs.

2.2 Children and armed conflict

The current conflict in the DRC has had serious consequences on civilians, and especially on children. A large number of children were and still are being recruited by the armed forces of the conflict parties, as well as being killed or displaced.

According to the Comité des observateurs des droits de l'homme (CODHO), a member of OMCT SOS-Torture network, the phenomenon of child soldiers is very common in the DRC. Its origin lies in the war that was fought by the Alliance des Forces du

2 - *Ibid* para 15, 16.

3 - Oral presentation of the Special Rapporteur on the situation of Human Rights in the Democratic Republic of the Congo, 29 March 2000.

4 - Decree n° 172, Kinshasa, 2 January 1999.

5 - Decree n° 172, Kinshasa, 2 January 1999.

8

Congo pour la libération (AFDL) in 1996. At the time, the AFDL needed Congolese soldiers to overthrow Mobutu's dictatorship. Children from the provinces of North-Kivu and South-Kivu were enrolled in the army which, victory after victory, was to reach Kinshasa on 17 May 1997.

Several thousand child soldiers are currently sleeping in the streets of Kinshasa, abandoned by the army and rejected by the local population. Their reintegration into society is proving difficult, and many of them are deeply traumatised by the acts of violence they were forced to commit.

In the current conflict, all the forces of the DRC started to use child soldiers on a regular basis, by enrolling them, first voluntarily, then by force. According to some sources of information, an official communiqué broadcast on the radio on 7 August 1998 invited children and young people from 12 to 20 to join the armed forces, in response to the insurrection by the Congolese Rally for Democracy (CRD)[6]. In addition, several hundred street children were kidnapped in the streets of Kinshasa on 17 February 2000 and forced to join the armed forces[7]. Often, child soldiers perform tasks which adult soldiers refuse, such as performing extra judicial executions within their own ranks[8].

Information from the SOS Torture network reports that children under 15 are being recruited in both the occupied territories and parts of the country that are under government control[9]. This is in spite of law n° 066 of 09 June 2000 on demobilisation and reintegration of child soldiers. The law defines as child every girl and boy below 18 years old in conformity with the Convention on the Rights of the Child and the Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts.

According to the Association Africaine de Défense des Droits de l'Homme (ASADHO), a member of the SOS-Torture network, during a meeting organised on 22 June 2000 in the recruitment centre of the FAC (Forces armées congolaises) "Tate Raphael", under the direction of the commander of the instruction centre of Kibomango, soldiers advocated the falsifying of recruitment age if the child was tall. This happened soon after the signing of the

6 - Victimes de guerre, Les civils, l'état de droit et les libertés démocratiques, HRW report, February 1999, pp. 11-12.

7 - Defence for Children International, Dutch section.

8 - Collectif Vigilence Kivu, June 2000.

9 - Communication of the African Association for the Defense of Human Rights (ASADHO).

Presidential Decree of the 9 June 2000, on the demobilisation of child soldiers. According to the same source, most of the recruits signed up in June and July 2000 were allegedly under 15, but were taken because of their height. The number of children recruited between May and July 2000 is allegedly 1850[10].

OMCT notes with regret that the Government report does not provide any information on the effects of conflict on children, and is concerned about the psychological trauma suffered by child soldiers as a consequence of their conscription, be it forced or voluntary. It recommends that the Congolese authorities ensure unconditional and effective demobilisation, rehabilitation and reintegration of child soldiers. OMCT invites the Government to respect the recruiting age fixed at 16 by Congolese legislation, and to ratify the Optional Protocol in the Convention on the Rights of Children. This protocol, on the participation of children in armed conflicts, sets the age of recruitment in the armed forces at 18.

2.3 Non-discrimination

As OMCT believes that discrimination is one of the causes of torture, it regrets that the State report only deals very briefly with the issue of non-discrimination. Article 11 of the ACT theoretically the forbids all forms of discrimination. However, the reality seems to be very different.

2.3.1 Discrimination against girls

Concerning the age of marriage, article 352 of the Family Code establishes that boys under 18 and girls under 15 may not marry. Article 288 of the Family Code establishes that when a minor marries, he/she reaches majority, which includes criminal majority. With this emancipation principle, the Congolese legislation allows a form of discrimination, which deprives certain children of the protection of the Convention, particularly girls between 15 and 18.

In addition, the differentiation of the age of marriage as it is provided for by the law encourages boys to be educated up to the age of 18, while girls' education can be stopped earlier, implying that they are of secondary importance. Dropping out of school at an

10 - Communication of ASADHO.

early age has serious consequences on the well-being of girls and women, particularly in terms of emancipation, paid employment, health, and access to recourse.

As a consequence, OMCT recommends that the Congolese authorities amend article 352 of the Family Code so as to avoid the discriminatory consequences mentioned above.

2.3.2 Displaced children, refugee children and child soldiers

OMCT recalls that under the Convention, the State is obliged to treat all children living in its territory equally, whatever their origin. However, it seems that refugee children and displaced children suffering from the aftermath of the war are discriminated against.

According to UNICEF, since its beginning in August 1998, the conflict brought about a dramatic increase in the number of children needing special protection i.e. unaccompanied minors, refugee children, child soldiers and other children traumatised and affected by the armed conflict.

According to the High Commission for Refugees, over 700,000 people have been displaced within the country since the beginning of the conflict in 1998, of which 300,000 are thought to be children[11]. These figures do not take into account the continual influx of refugees coming from Angola and Congo-Brazaville. The UNHCR estimates that during the first months of 2000, 8,000 Angolan refugees arrived in the provinces south of the DRC as a result of the war between the Angolan Government and the rebel forces of the UNITA[12].

2.3.3 Street Children

OMCT is also concerned about discrimination against children in difficult situations, such as street children.

On the issue of street children, research by UNICEF published in October 2000 estimates that the percentage of street children in the provinces of East Kasaï is 58.8%, in the province of Katanga 42.9%, and 36.1% in Western Kasaï[13]. OMCT is concerned about article 4 of the Decree on Juvenile Delinquency (Décret sur l'enfance délinquante)[14] which establishes that minors who

11 - UNICEF "Humanitarian Response to Children", January - June 1999, p 1.

12 - UNHCR Mid-Year report 2000, p. 40.

13 - DIA Bulletin from October 2000.

14 - The decree was adopted on 6 December 1950.

live a debauched life, who are beggars and vagrants, could be subject to the sentences provided by article 2 of the same Decree, among which they are liable to being placed under the responsibility of a person, a society or a charity, or a public or private education centre until they are 21; at the disposal of the Executive Council until they reach 21[15].

According to different sources, street children in Western Kasaï are also the victims of arbitrary arrests and of harassment by the police, on the grounds that they are allegedly in league with the rebels[16].

OMCT is of the opinion that children must not be considered as potential delinquents on the sole basis of their social status, and that disciplinary action should never be substituted for preventive measures.

2.3.4 Children belonging to ethnic minorities

No information was given in the State report on the subject of children of ethnic minorities. OMCT would nevertheless have appreciated some information about racial discrimination, in particular discrimination against Tutsi children, and the measures that were taken to appease the climate of violence against the Tutsi in general. According to certain information from our SOS-Torture network, these discriminations take the form of abuse of children whose parents are of Tutsi morphology, as well as against children in different social situations, such as child soldiers or children born out of wedlock[17].

According to some sources, the wave of persecutions of the Tutsi started at the end of July 1998, following the order given by President Kabila to expel all Rwandan soldiers from the Congo[18]. Following this, the Government orchestrated a hate campaign in the media. Following these appeals by the Government, a large number of Tutsi were massacred in the regions under Governmental control, by civilians as well as by the army, sometimes after being arrested by the army. According to the same sources, a widow living in an area of

15 - « Les mineurs se livrant à la débauche, [...] à la mendicité ou au vagabondage pourront se voir infliger les peines prévues à l'article 2 "du même Décret, à savoir se voir" confier jusqu'à leur vingt et unième année à une personne, à une société ou à une institution de charité ou d'enseignement public ou privé ; de se voir mettre jusqu'à leur vingt et unième année à la disposition du Conseil Exécutif ».

16 - Communications from Western Kasaï, National Forum of the Congolese NGOs on Human Rights, August 2000, p. 6.

17 - Communications from ASADHO.

18 - Victimes de guerre, Les civils, l'état de droit et les libertés démocratiques, HRW report, February 1999, p. 11.

Kinshasa was arrested and detained in the offices of the rapid intervention police. During her arrest, she was violently beaten by the police, as were her two children aged 13 and 15, who were reproached for being from Rwanda.

Most of the victims were Tutsi, but Congolese NGOs for the defence of Human Rights have noted that homeless people, mentally handicapped people and people whose only wrong was to bear a vague resemblance to Tutsi people, were also killed[19].

However, the Government seems to have finally opted for a protectionist position, and even set up protection centres with the help of the Committee of the International Red Cross and of foreign governments[20] to protect these populations.

2.4 Female Genital Mutilation

The practice of female genital mutilation has horrendous effects on the child and the state of health of the girl, both during the act itself and in the longer term. Besides the fact that the haemorrhages that follow may be fatal, there is also a serious risk of infection (notably tetanus and septicaemia) from the instruments that are used, as well as damage to the adjoining organs as girls tend to struggle during the operation. The practice of female genital mutilation violates the right of the child to enjoy the best possible state of health, as is stipulated in article 24 (1) of the Convention, and ignores paragraph 3 of the same article which aims at abolishing traditional practices which are detrimental to children's health.

The practice of female genital mutilation does not seem to be very widespread, but different ethnic groups in the north of the country continue to practise it. This practice seems to affect 5% of the population of the DRC[21]. However, the Government does not mention this problem in its report, and does not seem to have broached it.

19 - *Ibid.*, pp. 11-12.

20 - Special Rapporteur report on the situation of Human Rights in the DRC, A/55/403, September 2000, par. 37.

21 - IRWAW country report, CEDAW/C/COD/3 July 1998.

III. Definition of the child

The article 219 of the Family Code defines the minor as an individual of either sex who has not reached 18[22]. It is the same for the civic majority established by article 6 of the ACT.

However, in criminal terms, the first article of the Decree on Juvenile Delinquency[23] defines a minor as a child of at least 16 at the moment of the events[24]. As a consequence, any person aged 16 and over has full criminal responsibility, whereas children under 16 benefit from limited responsibility as provided for by the Decree on Juvenile Delinquency.

As for sexual majority, article 422 of the Family Code states that all girls aged fourteen are pubescent. Article 167 of the Penal Code sanctions all indecent assault committed without violence, malice or threat on the person or with the help of the person of a child under fourteen[25]. Hence, it is possible to conclude that sexual majority is fourteen years old.

As for the age of marriage, article 352 of the Family Code sets the minimum age for marriage at 15 for girls and 18 for boys. However, in rural areas, early marriages of girls under fourteen are celebrated. These girls are made to marry village chiefs who may already have several wives, this arrangement being part of the access to a political or socio-economic position[26].

As for the minimum age for the enrolment in the forces, law n° 081 - 003 of 17 July 1981 on public services sets the age of 16 for the recruitment of agents in the public services and in the army[27]. The draft Constitution provides that no one under the age of 18 shall be recruited by the police force or the national army, or take part in hostilities, (article 42). This draft

22 - « L'individu de l'un ou l'autre sexe qui n'a pas encore l'âge de dix-huit ans accomplis ».

23 - See footnote number 14.

24 - « L'enfant âgé de moins de seize ans accomplis au moment du fait ».

25 - « Tout attentat à la pudeur commis sans violence, ruse ou menace sur la personne ou à l'aide de la personne d'un enfant âgé de moins de quatorze ans ».

26 - Odette Boile Nonkwa Mubiala, « Evaluation de l'état d'application de la Convention sur l'élimination de toutes les formes de discrimination à l'égard des femmes au Zaïre », Ministère de la santé publique et de la famille, juin 1996, p. 24 in « violence contre les femmes : un rapport » OMCT 1999, p. 152.

27 - Report of the association «Enfants de Dieu, Enfants des Hommes » on children's rights, p. 26.

Constitution has yet to be adopted. However, and in spite of article 38 of the Convention stipulating that the State parties must refrain from enrolling any person who has not turned fifteen in the armed forces, several reports, as mentioned above, suggest that children under fifteen have been recruited in the armed forces, by all parties in the conflict.

The Committee should exhort the authorities to make sure that the definition of the child is in accordance, in the whole of the legislation, with the one provided by article 1 of the Convention, in order to ensure the efficient protection of people under 18, and to ban all forms of discrimination against them.

IV. Torture and other cruel, inhuman or degrading treatments

The Committee has, on numerous occasions, highlighted the fact that State parties must consider the implications of article 37 (a) of the Convention in their legislation. This article is linked with the definition of torture as it is given by the first article of the Convention against torture and other cruel, inhuman or degrading treatment. In addition, the Committee, in its examination of the reports from State parties and other documents, indicated that it considered the United Nations Rules and Principles on juvenile justice as an adequate set of guidelines for the application of Article 37[28]. These are: the Beijing Rules[29], the Riyad Principles[30], and the Rules for the Protection of Minors Deprived of their Freedom[31].

The State report addresses the issues of torture and other cruel, inhuman or degrading treatment only too briefly. OMCT is of the opinion that the authorities must provide the Committee with more accurate information, not only concerning the protection of children against these types of violation, and their rights regarding Congolese legislation, but also concerning the possibility of pressing charges, which is offered to children, who are the victims of torture.

28 - See for example the tenth session report, October-November 1995, CRC/C/46, par. 214 or the ninth session report May-June 1995, CRC/C/43, appendix VIII.

29 - General Assembly Resolution 40/33.

30 - General Assembly Resolution 45/112.

31 - General Assembly Resolution 45/113.

4.1 Legal Framework in the DRC

OMCT is pleased that according tc article 9 of the Constitutional Act of Transition no one may be submitted to torture or other cruel, inhuman and degrading treatment[32]. This article seems to correspond only partially to the duties that stem from article 37 of the Convention, which also includes cruel treatment and punishments[33]. Article 67 of the Penal Code establishes that any person convicted of performing acts of physical torture is liable to a criminal sanction of five to twenty years. If the acts of torture were the cause of death, the guilty party is will be sentenced to life imprisonment or capital punishment.

However, it seems that there is no definition of torture in Congolese law, and in particular, a lack of reference to psychological and mental torture.

Similarly to the Human Rights Committee, OMCT is concerned with the practice of torture and of cruel, inhuman and degrading treatment. Furthermore, since torture is not specified as a crime in internal legislation, cases of torture are treated as voluntary assault and battery[34].

OMCT would like to advise the Congolese Government to promulgate a law defining the crime of torture according to the terms of the first article of the Convention on torture.

4.2 Impunity

Article 180 of the Penal Code guarantees in theory that all acts which are arbitrary or detrimental to the freedoms and rights guaranteed to individuals by the laws, decrees, orders and edicts, ordered or executed by a state official or a public official, by a depository or agent of the authority or of the police, will be punished. These actions will be punished by a minimum criminal sentence of fifteen days to one year. If they constitute an infraction punished by more severe sanctions, their author will be sentenced to these sanctions.

However, as the Committee on Human Rights[35] recorded, the political will of amnesty for the crimes which were committed during times of civil war can represent a form of impunity which would be

32 - « Nul ne peut être soumis à la torture ni à des traitements inhumains ou dégradants ».

33 - "No child be submitted to torture or cruel, inhuman or degrading treatment or punishment" [...] (Article 37(a) emphasis added).

34 - Human Rights Committee, Final observations on the second periodical report of the DRC, CCPR/C/79/Add.118, para 13.

35 - *Ibid*, para 12.

incompatible with the international commitment made by the DRC. The texts supporting the amnesty of the authors of serious crimes do not guarantee the respect of obligations signed by the DRC within the International Pact on Political and Civil Rights, particularly paragraph 3 of article 2 which demands the provision of an effective remedy for any person whose rights and freedoms recognised by the Pact were violated. The amnesty laws are generally incompatible with the duty of the State to investigate violations of Human Rights, to guarantee the right to be free from such violations in the limits of its competence, and to ensure that similar violations will not occur in the future.

4.3 Practise

Because of the current war situation of the DRC, the legal framework does not provide all the guarantees of a constitutional state.

According to the Rapporteur of the Committee for the elimination of racial discrimination in January 2000, arbitrary and summary executions carried on. The members of certain ethnic groups were forced to live clandestinely, and arbitrary and illegal detentions and arrests took place throughout the country. Still, according to the Rapporteur of the Committee for the elimination of racial discrimination, torture as well as cruel, inhuman and degrading treatments are practised on a very large scale[36].

In September 2000, the Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in the RDC, claims that torture is systematically and brutally practised. The tolerated existence of secret or illegal detention centres (*amigos*), which escape all control only makes this scourge worse[37].

OMCT considers that it is vital that the Congolese delegation explain itself on the measures which have been effectively taken to ensure the physical and psychological safety of minors, within the family, at school as well as in any other establishment which may care for them.

36 - Analytical report of the 1352th session of the Committee for the elimination of racial discrimination, 31 January 2000, CERC/C/SR.1352, Para. 64..

37 - Special Rapporteur report on the situation of Human Rights in the DRC, A/55/403, September 2000, par. 57.

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V. Protection against all forms of violence

Article 19 (1) of the Convention calls for the protection of children against "all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment [...] while in the care of parent(s), legal guardian(s) or any other person who has the care of the child".

Article 9 of the ACT states that all persons have the right to life and to corporal integrity. Besides, the Penal Code and its articles 46, 47, 48 and 52 punish all people guilty of physical violence with sentences of up to twenty years in prison.

However, the Family Code in its article 326, on the subject of parental authority, states that the mother or father, or whoever has parental authority, can inflict punishments and reprimands in a measure which is compatible with the age of the child and the amendment of his or her behaviour[38]. The punishments or reprimands are left to the parents' discretion. According to certain information, these reprimands or punishments often consist of depriving the child of food, clothes and other goods, of hitting the child with a stick or a belt. These corporal punishments are all the more questionable as the dietary situation keeps getting worse every day.

OMCT recommends that the Congolese Government amend its legislation as soon as possible in order to remove this contradiction within the legislation and to conforme with the measures provided for by the Convention, which force States to guarantee adequate protection of the physical and psychological integrity of children.

In addition, because no information has yet been offered by the State report, OMCT recommend that the Committee ask the State to give more detailed information about the prohibition of corporal punishment in institutions for children, in preventive detention centres and in detention centres.

38 - « Les père ou mère ou celui que exerce l'autorité parentale [...] peuvent infliger à l'enfant réprimandes et corrections dans la mesure compatible avec son âge et l'amendement de sa conduite ».

5.1 Sexual abuse

Minors under fourteen are protected against sexual abuse by the Congolese legislation. Article 170 of the Penal Code provides for a sentence of between five and twenty years for those guilty of rape, either with violence or serious threats, or maliciously, or by abusing a person who, because of a disease, the alteration of their faculties or any other accidental cause, has lost the use of their faculties or has been deprived of them because of some artifice[39]. According to article 170(2) of the Penal Code, rape with violence is the violent physical contact of the sexes against persons under fourteen[40]. OMCT notes that the Congolese legislation aims to curb attempts of rape, but it does not seem to offer protection against any other kind of sexual contact.

According to article 171 bis of the Penal Code, sentences are doubled if the crime is committed by the victim's ascendants, teachers or servants, if the attack was committed either by public officials or priests who abused their position to commit it, if the guilty party was helped in the execution of the infraction or if the infraction caused the victim's health to deteriorate[41].

According to certain sources, it is not rare for girls to be submitted to sexual violence by their teachers, a practice which has a tendency to generalise itself in schools[42]. According to the same source, violence against women and girls from the age of 7-8 takes the form of systematic rape in the Lower Congo[43].

39 - « Pour celui qui aura commis un viol, soit à l'aide de violence ou menaces graves, soit par ruse, soit en abusant d'une personne qui, par l'effet d'une maladie, par l'altération de ses facultés ou par toute autre cause accidentelle, aurait perdu l'usage de ses sens ou en aurait été privée par quelque artifice ».

40 - « Est réputé viol à l'aide de violences, le seul fait du rapprochement charnel des sexes commis sur les personnes [âgées de moins de quatorze ans] ».

41 - « Les ascendants [de la victime] [...], ses instituteurs ou ses serviteurs à gages [...], si l'attentat a été commis soit par des fonctionnaires publics ou des ministres d'un culte qui ont abusé de leur position pour le commettre, [...] si le coupable a été aidé dans l'exécution de l'infraction [...] ou si l'infraction a causé à la victime une altération grave de sa santé ».

42 - Communications from Kinshasa, National Forum of the Congolese NGOs on Human Rights, August 2000, p. 8.

43 - Communications from the Lower Congo, National Forum of the Congolese NGOs on Human Rights, August 2000, p. 4.

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VI. Children in conflict with the law

6.1 Age of criminal responsibility

Criminal majority is reached at the age of 16. The first article of the Decree on Juvenile Delinquency[44] defines as a minor as a child who had not yet reached the age of sixteen at the time of the events[45]. Hence, a child of 16 and older encurs the same punishment as adults for the infractions or crimes they have committed. Children under 16 incur the sentences mentioned in the Decree.

However, OMCT notes with concern that no minimum age has been set by the Decree. Therefore, OMCT asks the Congolese Government to set a minimum age under which a child must be considered irresponsible in the eyes of the law. Besides, OMCT believes that it is indispensable for the age of complete criminal responsibility to be raised to 18 in order to allow the highest possible number of children to benefit from the protection offered by the Convention.

6.2 Deprivation of Freedom

6.2.1 Custody

Of all the phases of the proceedings of juvenile justice, it is at the moment of the arrest, or immediately after the arrest, during custody, that the minor is most exposed to risks of torture and other forms of cruel, inhuman and degrading treatment. It is also at this stage that the minor risks being denied the presence of one of his parents, of a social worker or of a legal representative who would be better suited to provide protection against this type of action.

However, it seems that the Congolese legislation does not define any length of custody for the minors who take part in legal proceedings. OMCT would like the Congolese authorities to provide the Committee with more information on this subject.

6.2.2 Pre-trial detention

International norms, including the

44 - See footnote number 1.

45 - « L'enfant âgé de moins de seize ans accomplis au moment du fait ».

Convention, clearly state that the deprivation of freedom must only be used as a last resort, and for the shortest possible period.

Furthermore, it is during custody that a child faces the greatest risk of being held in very poor conditions of detention, and that international standards that must be applied are disregarded.

OMCT is deeply concerned to note that the Congolese legislation allows the judge to order a minor to be kept in detention for up to two months if the minor is considered "vicious" or if no institution is prepared to accept him in (article 17 of the Decree on Juvenile Delinquency[46]). Not only does the length of detention go beyond what is acceptable in terms of temporary detention of minors, but it also paves the way for arbitrary decisions by leaving it to the judge to interpret the term "vicious".

Information from our network indicates that minors who have committed crimes are sent directly to prison, without going through appropriate detention centres, as is stipulated by the law. According to information from our network, children in rehabilitation centres are left to their own devices. The State does not provide for them. It is only through the help of NGOs and churches that these children are cared for[47].

OMCT wishes to mention that children in temporary detention must be separated from children convicted of crimes punishable by the law.

6.2.3 Separation of adults and minors

There is no mention in the Decree on Juvenile Delinquency[48] of the necessity to separate children and adults in detention centres. Article 17 of the Decree merely refers back to a specific regime, which must be determined by the President of the Republic. Although article 37 (c) of the Convention provides that all children deprived of their freedom must be separated from adults, it is apparent from the information received by us that children are placed in the same prisons as adults, because the lack of appropriate structures does not make it possible to place them in separate establishments[49].

46 - See footnote number 14.

47 - Communications from ASADHO.

48 - See footnote number 14..

49 - Report by « Enfants de Dieu, Enfants des Hommes » on children's rights in the DRC, p. 26.

OMCT would have liked more details on this specific regime determined by the President of the Republic, and particularly on what he provides for the conditions of detention of minors. Besides, OMCT would like to add that the measures of deprivation of freedom should only be taken as a last resort. Every time this is possible, measures that do not deprive children of their freedom should be preferred. Also, measures that deprive children of their freedom should only be ordered for the shortest possible period of time.

6.3 Procedure

6.3.1 Children's Courts and Procedure

According to Article 5 of the Decree on Juvenile Delinquency[50], the only competent judge in terms of dealing with a first degree infraction committed by a minor is the Justice of Peace with a representative from the Prosecution, a paid magistrate.

However, when it comes to military justice, the military criminal law submits all soldiers, including those who are under 18, to the competence of the armed forces, and to sentences provided for by military law.

In addition, the most blatant cases of abuse of power are attributable to the Cour d'ordre militaire (COM) (Military Court). This Court, initially created to repress abuse by members of the army and of the police force and armed robbery, still judges civilians and even opponents. According to the terms of the Rapporteur on the situation of Human Rights in the DRC, the COM receives its share of general criticism against military justice, because it does not satisfy the conditions of independence and of impartiality in its judgements. Besides, the COM benefits from enormous prerogatives incompatible with international norms on the administration of justice[51]. Its statutes do not allow any form of appeal[52].

OMCT wishes to mention the importance and the necessity for every child to be judged by judges who have been specially trained to allow them to deal with situations that fall within juvenile justice.

50 - See footnote number 14.

51 - Special Rapporteur report on the Situation of Human Rights in the DRC E/CN.4/2000/42.

52 - Oral presentation of the Special Rapporteur on the Situation of Human Rights in the DRC, 29 March 2000.

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6.3.2 Death Penalty

Despite the solemn announcement by the Minister of Human Rights on 10 December 1999 to order a moratorium on death penalty, and the promise by President Kabila to the High Commissioner on Human Rights during his visit to the DRC in October 2000 to stop using the death penalty and to commute it to life imprisonment, the death penalty is still being ordered, even if certain sentences are then commuted to life imprisonment.

Hence, child soldiers submitted to the regime of military justice are liable to a death sentence because of their actions. This is how on 15 January 1999, a child soldier aged fourteen was executed within half an hour of his trial[53]. OMCT recommends that the Congolese Government amend the law as soon as possible in order to abolish capital punishment for children under 18 years of age, as is compulsory by article 37 of the Convention. The Congolese government should also guarantee the possibility to appeal against all decisions and measures taken before the superior and competent, independent and impartial authorities or legal bodies, in accordance with the law.

According to several concurring sources[54], a child soldier of 13 who had shot a local representative of the CICR in 1998 was sentenced to death by the Cour d'ordre militaire. The sentence was commuted to life imprisonment by the President, the only authority empowered to review death sentences ordered by the Cour d'ordre militaire[55]. In spite of this, OMCT would like to mention that in accordance with article 37 of the Convention, no child may be submitted to a sentence of life imprisonment, whether they are a soldier or not.

With regard to juvenile justice, the death penalty is prohibited by article 8 of the Decree on Juvenile Delinquency[56]. This article stipulates that if a minor has committed an infraction punishable by the death penalty or by life imprisonment, the judge will be allowed to extend it beyond the twenty-first year of the child for a maximum of twenty years[57]. OMCT is of the opinion that a sentence of twenty-five years[58] for a

53 - Amnesty International, press release AFR 62/011/00, 31 May 2000.

54 - Human Rights Watch, ANB-BIA, weekly news issue, 24/03/1998.

55 - Human Rights Watch Report, February 1999.

56 - See footnote number 14.

57 - « Si le mineur a commis une infraction punissable de la peine de mort ou de la sanction pénale à perpétuité, le juge pourra prolonger celle-ci au-delà de la vingt et unième année de l'enfant pour un terme de vingt ans au maximum ».

58 - 20 years imprisonment from age 21 for a child who committed a crime at 16 means that the total sentence is of 25 years.

crime committed by a child does not constitute a last resort measure, and hence is not acceptable.

As a consequence, OMCT would like to ask the Congolese Government to amend its legislation accordingly, and to reduce the length of the sentences that may be pronounced against children who have committed crimes liable to the death penalty or life imprisonment.

6.3.3 Revision of measures taken

The article 18 of the Decree on Juvenile Delinquency[59] provides that a judge can, at any time, either spontaneously, or at the request of the Prosecution, the minor, the parents, the guardians, or people who are in charge of the child, following reports from delegates for the protection of children, report or modify the measures that were taken, and act within the limits of the Decree for the best interests of the child. These measures are in every case the object of a revision every three years if their effects have not ceased in the meantime. However, and according to Government's own testimony[60], the revision of measures is very rare.

6.4 Medical Examination

OMCT considers that children in custody, in preventive detention or in detention are entitled to a regular medical check-up. This measure allows the detection, prevention and stopping of torture and ill-treatment. The article 15 of the Decree on Juvenile Delinquency[61] states that it is the duty of the judge to organise a medical examination, at every step of the procedure. However, it does not give any details regarding the enforcement of this disposition.

OMCT recommends that the Committee enjoin the Government to complete the law so that the medical examination no longer depends uniquely on the judge's decision, but becomes an automatic measure at every step of the procedure, and this immediately upon the child's arrival in a detention centre, and that every examination must be recorded in a register.

59 - See footnote number 14.
60 - CRC/C/3/Add. 57 par. 188.
61 - See footnote number 14

VII. Rehabilitation

As for the rehabilitation of children having suffered from ill-treatment, the Congolese State has set up about twenty establishments to house these children. Only two of these establishments are effectively operational, one in Madimba in Lower Congo, the other in Kinshasa.

According to information from members of our network, no more children are being sent to the Kinshasa centre[62].

VII. Conclusions and Recommendations

The state report demonstrates that the Congolese Government is aware of the obstacles to application of the Convention. Many of the recommendations in the report seem perfectly adequate, and imply that the children living in the DRC would benefit from better protection. However, to achieve this, the measures, which are so clearly identified by the authorities, must be applied effectively.

The International Secretariat of OMCT wishes to express its concern regarding the current conflict in the DRC and the consequences of this conflict on the respect of the concerned populations' rights, and particularly children's rights.

OMCT is of the opinion that a reform of the legal system for children should be carried out in order to guarantee the effective promotion and protection of children's fundamental rights.

OMCT regrets that the Congolese authorities have not included important information in their report, particularly concerning the ill-treatment and cases of torture, as well as

62 - Communication of ASADHO.

sentences applied to State agents responsible for violations against children, the conditions in which children are detained, the rehabilitation programmes planned for these children, and the impact of the current conflict on children, especially child soldiers and refugee children.

OMCT would recommend that the authorities of the DRC ensure, unconditionally and effectively, the demobilisation, rehabilitation and reintegration of child soldiers. OMCT would also enjoin the authorities to ensure that the existing law on the minimum age of recruitment is applied, and to sign and ratify the optional Protocol to the Convention on the Rights of Children about children's participation in armed conflicts. In addition, OMCT would recommend that no child soldier, whatever his age, be subjected to the jurisdiction of the Cour d'ordre militaire and sentenced to capital punishment, life imprisonment or to twenty-five years in prison.

OMCT is deeply concerned by the discrimination *de jure* and de facto against girls compared to boys, and would request the Congolese authorities:

- To harmonise Congolese legislation, in particular article 352 of the Family Code and customary practices, with the dispositions of the Convention.

Regarding street children, OMCT would invite the Congolese authorities to modify article 4 of the Decree on Juvenile Delinquency so that street children are not considered as potential delinquents on the sole basis of their social status.

OMCT would like the Congolese authorities to provide the Committee with more information on the situation of Tutsi children and on the measures that have been taken to remedy interethnic violence. OMCT would recommend that the authorities take the necessary legal measures to ensure that all children are protected from discrimination, in particular from discrimination based on their ethnic origin, and that of their parents.

As for torture and other cruel, inhuman and degrading treatment or punishment, OMCT would recommend that the authorities:

- promulgate a law defining torture in accordance with the first article of the Convention against torture.

- take the necessary legal measures to prohibit corporal punishment within the family by abrogating article 326 of the Family Code.

In addition, the Congolese authorities should provide the Committee with information on the possibility for child victims of torture and other cruel, inhuman and degrading treatment to press charges.

OMCT is seriously concerned with the situation of sexual violence with which girls are confronted within schools, and would ask the Congolese authorities to guarantee their protection and to punish those responsible according to existing laws. OMCT also recommends that the DRC provide within the legislation for child victims of sexual abuse to be able to lodge complaints.

As for criminal matters, OMCT requests the Congolese Government to set a minimum age for criminal responsibility, and to raise the age of majority to 18.

Concerning custody and preventive detention, OMCT would recommends that the Congolese authorities amend the legislation, particularly article 17 of the Decree on Juvenile Delinquency, in order to avoid children being arbitrarily deprived of their freedom, and to make sure that the time spent in preventive detention is as short as possible.

OMCT also recommends that the Congolese authorities promulgate a law providing for the separation of children from adults in prisons, as well as the separation of children awaiting trial from those serving a sentence.

As for the administration of juvenile justice, OMCT urges the Congolese Government to respect the United Nations Rules and Principles, which are the Beijing Rules, the Riyad Principles and the Rules for the Protection of Minors Deprived of their Freedom.

Finally, OMCT insists on the need to implement all the dispositions of the Convention on the rights of children, of the Pact on civil and political rights and of the Convention against Torture and other Cruel, Inhuman or Degrading Treatments, as these are the most relevant international instruments against all the forms of violence against children.

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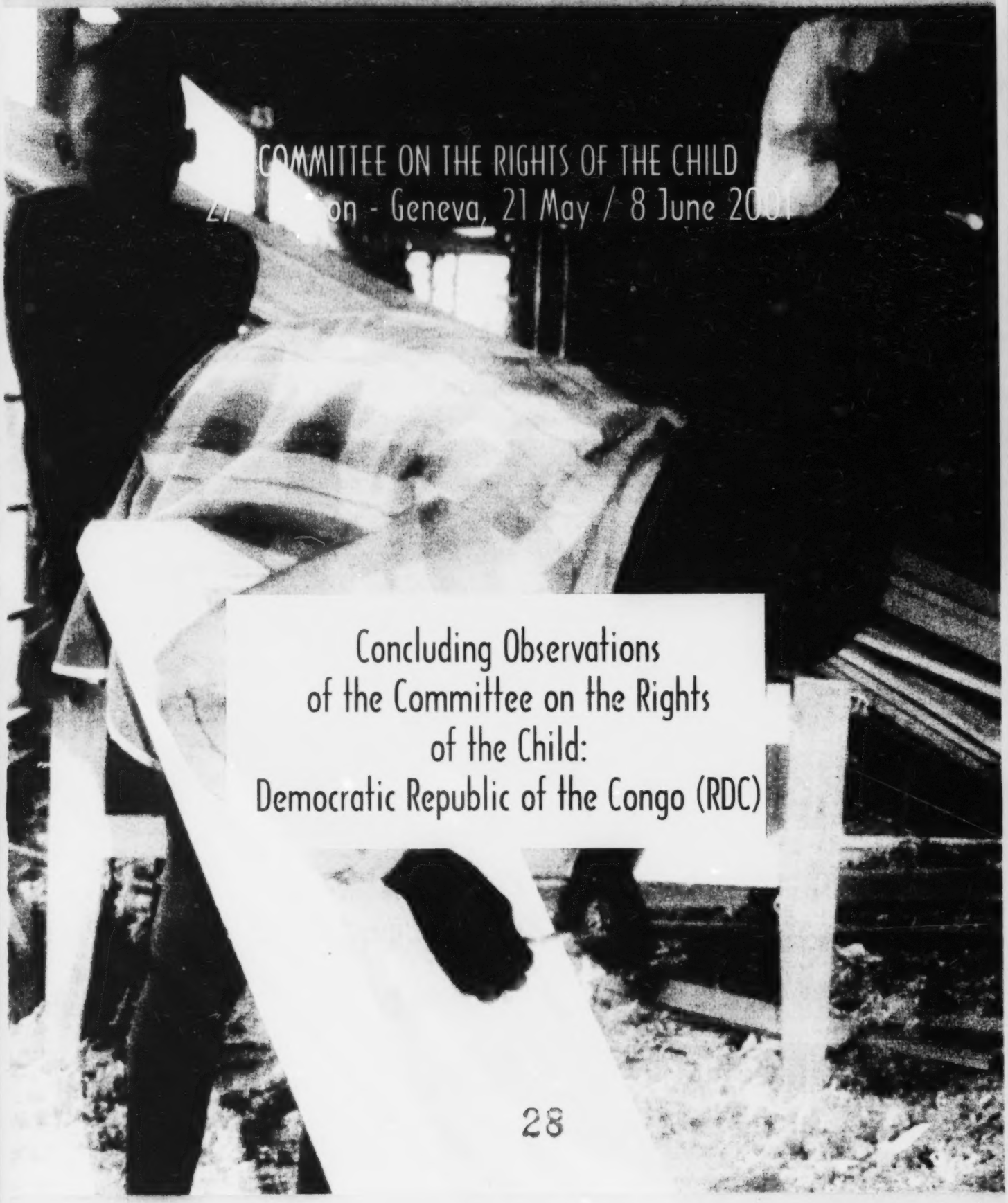

COMMITTEE ON THE RIGHTS OF THE CHILD

...on - Geneva, 21 May / 8 June 20...

Concluding Observations of the Committee on the Rights of the Child: Democratic Republic of the Congo (RDC)

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

1. At its 705th and 706th meetings (see CRC/C/SR. 705-706), held on 28 May 2001, the Committee on the Rights of the Child considered the initial report of the Democratic Republic of the Congo (DRC) (CRC/C/3/Add.57) and adopted (at the 721st meeting, held on 8th June 2001) the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the initial report, which generally followed the guidelines for reporting. The Committee notes that the report contained useful information on implementation of the Convention. The Committee further appreciates the information provided in the written replies and the dialogue that took place with a high level delegation.

B. Positive Aspects

3. The Committee welcomes the State party's indication during the dialogue that its top 3 priorities with regard to the Convention's implementation are to strengthen legislation and improve education and health services.

4. The Committee notes, as an important positive step, the adoption of "decree" number 066 of the 9 June 2000 with regard to the demobilisation of children from the armed forces and the establishment of a special bureau to review this decree.

5. The Committee welcomes the creation of the National Council for childhood, the ongoing development of Provincial Commissions and the creation of the High Commission for Re-insertion. The Committee further welcomes the translation of the Convention into 4 local languages.

C. Factors and difficulties impeding the implementation of the Convention

6. The Committee notes the negative impact on children of the armed conflict within the State party's territory and the role of numerous actors in this conflict, including the armed forces of several States all party to the Convention, armed groups and numerous private companies (see UN Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo). The Committee notes, in particular, grave violations of the Convention within territory outside of the control of the State party and where armed elements, including armed forces under the jurisdiction of other States parties to the Convention, have been active. The Committee notes, in addition, article 38 of the Convention requiring States parties to respect provisions of international humanitarian law applicable to them and that, as indicated by United Nations sources (see, *inter alia*, Security Council resolution 1341 of 22 February 2001 (S/RES/1341/2001)), this law has been violated, particularly with regard to children. In this context, in addition to the responsibility of the State party, the Committee also emphasises the responsibilities of several other States and certain other actors for the negative impact of the armed conflict upon children and for violations of some provisions of the Convention and international humanitarian law within areas of the State party.

7. The Committee notes further, and in spite of the State party's significant natural resources, the extremely poor economic and social conditions of the vast majority of the population and of the State itself - factors that severely limit capacity to implement the Convention and to apply laws. The Committee notes, in particular, the State party's indication in its written replies to the Committee's list of issues that 89% of the population lives below the poverty line.

D. Principal subjects of concern, suggestions and recommendations

D1. General measures of implementation (arts. 4, 42 and 44, paragraph 6 of the Convention)

Legislation

8. The Committee is concerned at the severe

lack of implementation of existing legislation. The Committee notes, in addition, the State party's recognition in its report that in the content and application of specific domestic laws there are inconsistencies with the Convention on the Rights of the Child. The Committee is concerned that, *inter-alia*, the following legal instruments are not fully compatible with the provisions of the Convention: the "Family Code", "the Labour Code", "the Criminal Code", "the Criminal Procedure Code", "the Civil Code", "the Code on Judicial Organisation and Competence" and the "Decree of the 6 December 1950 with regard to Delinquency".

9. The Committee recommends that the State party strengthen its efforts to implement existing legislation relative to the promotion and protection of children's rights. The Committee, further, strongly recommends that the State party proceed with its efforts to review, and amend as appropriate, domestic legislation to ensure the full conformity of all legislation with the provisions of the Convention. In this regard the State party could consider the adoption of a children's law code that would gather together in one instrument all of the main provisions of domestic legislation of direct relevance to children. The Committee recommends that the State party seek assistance from UNICEF and OHCHR in this regard.

Implementation, national plans of action and monitoring

10. The Committee notes the involvement of various ministries in the Convention's implementation, the development of a national plan of action for the survival, protection and promotion of children and mothers and, more recently, the establishment of a Ministry for Human Rights and the National Council for childhood and provincial councils for children. However, the Committee remains concerned by the lack of effective co-ordination of the activities of these bodies in particular with regard to the implementation of the Convention and the national plan of action and the severe lack of resources available to the National Council. The Committee is similarly concerned about the lack of mechanisms to effectively monitor the Convention's implementation.

11. The Committee strongly recommends that the State party take all necessary steps to ensure the effective co-ordination of activities related to implementation of the

Convention, for example, by assigning the co-ordination role to the National Council, along with the necessary authority and budget. The Committee recommends, in addition, that the State party implement its recommendations in paragraphs 217 to 222 of the State party report and integrate relevant elements into a new updated plan of action. Furthermore, the Committee recommends that the State party introduce an independent monitoring mechanism for implementation of the CRC, and which is accessible to children. Finally, the Committee recommends that the State party seek technical assistance from UNICEF, WHO, ILO and other intergovernmental and non-governmental organisations.

Budget allocation

12. The Committee is deeply concerned at the very low annual budget allocations for health, education and other areas of direct relevance to children and at reports that these budget allocations were not fully disbursed.

13. In the light of article 4 of the Convention, the Committee recommends that the State party raise the proportion of spending on health, education and social welfare and other priority areas, to the maximum available resources, with a view to ensuring access to these services for all children and, where needed, within the framework of international co-operation.

Data

14. The Committee is concerned at the absence of up to date and accurate data with regard to the Convention's implementation. 15. The Committee recommends that the State party develop and strengthen a data collection system, with a view to including all areas under the Convention. Such a system should cover all children under 18 years of age, including vulnerable groups of children, as a basis for assessing progress achieved in the realization of children's rights and to help design policies for better implementation of the Convention's provisions. The Committee recommends that the State party seek assistance from, *inter alia*, UNICEF.

Co-operation with NGOs

16. The Committee notes the collaboration between the State party and some NGOs but remains concerned that co-operation with other NGOs working in favour of children's

rights is insufficient. The Committee is deeply concerned, in particular, by the reported high numbers of arrests and detentions of some NGO staff and the restrictions placed on NGO registration and activities.

17. The Committee urges the State party to prevent all harrasment (including arbitrary arrest and detention) of representatives and/or employees of NGOs. The Committee strongly recommends that the State party support and collaborate with NGOs in their activities to improve implementation of the Convention and to facilitate efforts to establish a nationwide coalition of NGOs focusing on the protection and promotion of children's rights. The Committee recommends, further, that NGOs be involved in the development of policies and programmes implementing the Convention.

Dissemination of the Convention

18. The Committee is deeply concerned that the Convention is insufficiently known and understood among relevant professionals and among the population in general.

19. The Committee urges the State party to initiate a thorough campaign to inform and train professionals - such as teachers, health professionals including psychological care specialists, social workers, law enforcement officials, national ministerial and local government officials with responsibility for children's rights - children and the population in general on the Convention and its principles and provisions. The Committee recommends that the State party adopt measures to ensure that such an information campaign reaches, *inter alia*, populations in rural communities, illiterate persons and persons living in parts of the country not currently under State party control.

D2 Definition of the child (article 1 of the Convention)

20. The Committee joins the State party (see paragraph 89 of the State party report) in expressing concern at the low minimum age of criminal responsibility and the young age of criminal majority - currently 16. The Committee expresses concern, further, at differences in the minimum age of marriage for girls (15) and boys (18).

21. The Committee recommends that the State party raise the minimum age of crimi-

nal responsibility and that the age of criminal majority be raised to 18, ensuring that all persons below age 18 benefit from international juvenile justice standards. The Committee recommends, further, that the minimum age of marriage of girls be raised to that applicable to boys.

D3. General principles (Arts. 2, 3, 6 and 12 of the Convention)

Discrimination

22. The Committee expresses deep concern at the practices of discrimination which continue to profoundly affect many children in the State party including ethnic and gender discrimination (see, *inter alia*, paragraph 91 of the State party report). The Committee is concerned that legislation does not explicitly prohibit discrimination against children for all of the grounds covered by the Convention in its article 2 and omits, for example, discrimination against children with disabilities.

23. The Committee strongly recommends that the State party urgently identify and address the different causes of discrimination and end all practices of discrimination which affect respect for the Convention. The Committee recommends that domestic legislation prohibiting discrimination be amended to include all the grounds prohibited under the Convention, including discrimination based on disabilities, and that a review be conducted of legislation to amend any provisions which are discriminatory and which have an impact on children. The Committee recommends that the State party continue and strengthen its efforts to end gender discrimination, notably against girls and women. The Committee recommends that the State party use, *inter alia*, education and human rights promotion to address discriminatory attitudes among the population in general and in changing discriminatory social practices, including through the promotion of the Convention's provisions and the right of women to non-discrimination. The Committee recommends that the State party implement the concluding observations of the Committees on the Elimination of Racial Discrimination (CERD/C/304/Add.18) and on Discrimination Against Women (A/55/38). The Committee recommends, finally, that the State party seek assistance from UNICEF and OHCHR.

Right to participation

24. The Committee is concerned that children's rights to participate in decisions which affect them is not respected.

25. In light of article 12 of the Convention, the Committee recommends that the State party increase awareness of the participatory rights of children, and to further encourage respect for the views of the child within the family; communities; schools; and administrative and judicial systems.

Life, survival and development

26. The Committee is deeply concerned that children's rights to life, survival and development are severely violated within the State party. The Committee is particularly concerned at reports of massive numbers of deaths related to the armed conflict in the east of the State party, and is deeply concerned by practices of infanticide.

27. The Committee strongly urges the State party to take all measures that will prevent the massive number of deaths related to the armed conflict and to prevent practices of infanticide through, *inter alia*, a peaceful, rapid and conclusive end to the armed conflict, through legislative and judicial means and through the development and implementation of appropriate policies to assure the rights to life, survival and development of all children.

D4. Civil rights and freedoms (arts. 7, 8. 13-17 and 37 (a))

Right to nationality

28. The Committee is deeply concerned that the right to a nationality of some children within the State party, and particularly children living in eastern regions of the country and the members of certain ethnic groups, is not respected.

29. The Committee urges the State party to ensure that all children, without discrimination, are accorded a nationality and that measures are taken to implement the concluding observations of the Committee on the Elimination of Racial Discrimination (CERD/C/304/Add.18) on this subject.

Birth registration

30. The Committee is concerned at the very low levels of birth registration in the State party. The Committee joins the State party (see paragraph 76 of the State party report) in expressing concern that the registration of a child may be hindered by the legal requirement that children be registered only in the area of their regular address and given that many persons have no fixed area of residence.

31. The Committee recommends that the State party continue and strengthen its ongoing efforts to ensure that birth registration is completed for all children, including through suitable amendments to legislation, the introduction of more flexible methods of registration and through information campaigns.

Torture and ill-treatment

32. The Committee is deeply concerned that children are regularly the victims of cruel, inhuman or degrading treatment and sometimes constituting torture committed by, *inter alia*, the police, military, teachers and in the family, and that these acts are violations of children's rights.

33. The Committee strongly urges the State Party to strengthen its efforts to address the causes and incidence of torture and cruel, inhuman or degrading treatment of children by, *inter alia*, the police, military, teachers and in the family, to end and prevent these violations of children's rights and to ensure that the persons responsible for these acts are brought to justice. The Committee recommends, in addition, that the State Party consider the possibility of compensation for the victims of torture and other acts.

Freedom of expression and of opinion

34. The Committee agrees with the State party (see paragraph 97 of the State party report) in expressing concern at limitations on children's right to freedom of expression and notes that children have insufficient opportunities to express their opinions and to have these taken into consideration.

35. The Committee recommends that the State party take steps to strengthen respect for children's right to freedom of expression including through promotion of the Convention's provisions toward parents, teachers and children themselves and in State institutions.

D5. Family environment and alternative care (arts. 5; 18 (paras. 1-2); 9-11; 19-21; 25; 27 (para. 4); and 39)

36. The Committee agrees with the State party in expressing deep concern that "the State seems increasingly to be shifting its duties and responsibilities on to parents and all persons effectively or legally responsible for a child's upbringing" (see paragraph 121 of the State party report). The Committee is concerned, further, by the large numbers of single parent and child-headed households, by the diminishing role of the extended family and the negative effect of these changes on respect for children's rights. The Committee is concerned, in addition, by the increasing practice of "bi-linear" families under which a community leader assumes parental responsibilities for children and that this practice is replacing parents and has a negative impact on children.

37. The Committee urges the State party to identify, within the framework of a coherent family policy, priorities in terms of the assistance required by parents and other guardians in the context of their care for children, and to ensure provision of the necessary financial and human resources in particular for single parents and child headed households. The Committee recommends, in addition, that attention be given to concerns related to bi-linear parenting practices.

Corporal punishment

38. In the context of article 19 of the Convention the Committee is concerned that the corporal punishment of children is permitted under domestic legislation and continues to be practiced in State institutions, including schools and places of detention, and in the family.

39. The Committee recommends that the State party take all appropriate measures, including of a legislative nature, to prohibit and eliminate all forms of corporal punishment in schools and in homes. The Committee further suggests that awareness raising and education campaigns be conducted to change public attitudes and ensure that alternative forms of discipline are administered in a manner consistent with the child's human dignity and in conformity with the Convention, especially articles 19 and 28.2.

Marriage of girls

40. The Committee joins the State party in expressing concern that current legislation and common practice provide insufficient protection to children in the context of early and forced marriage (see paragraph 82 of the State party report). The Committee is concerned, *inter alia* by the early marriage of many girls and by the practice through which an uncle may decide to marry his niece.

41. The Committee recommends that the State party implement measures to ensure that traditional marriage practices, including forced marriages, which are harmful to children are prohibited through, *inter alia*, the adoption and implementation of appropriate legislation. The Committee recommends that the State party make use of information campaigns to help change practices, particularly in rural communities, and ensure that marriages are registered in all areas of the country.

Separation of parents and care for children

42. The Committee joins the State party in expressing concern (see paragraph 93 of the State party report) that fathers are favoured by courts when determining which parent should have the care of children, that financial security is often the only criteria referred to by judges in such decisions, and that the best interests of the child are not a primary consideration.

43. The Committee recommends that the State party take steps to guarantee that child custody decisions are made on the basis of the best interests of the child and take due account of a child's views while also ensuring respect for a child's right to maintain contact with parents.

Alternative care, adoption

44. The Committee joins the State party in expressing concern at the practice of "fictitious" care (see paragraph 85 of the State party report) for children deprived of their parents, as a replacement of genuine adoption and which deprives these children of care and education. The Committee is concerned that mechanisms for the monitoring of respect for the rights of children in institutions and the provision of assistance are inadequate. The Committee is concerned, in addition, at reports of illegal adoptions, including inter-country adoption.

45. The Committee recommends that the State party undertake measures to ensure greater legal and effective protection of the rights of children, deprived of their parents, to emotional care and to education and health services, including in the context of informal adoption procedures. The Committee recommends, in addition, that the State party strengthen its mechanisms for the monitoring of respect for the rights of children in need of, and receiving, alternative care assistance. The Committee also recommends that the State party make every effort to ensure that all adoptions comply with international standards and are conducted in the best interests of the child. The Committee recommends, further, that the State party ratify the 1980 Hague Convention No. 28 on the Civil Aspects of International Child Abduction and the 1993 Hague Convention No. 33 on Protection of Children and Cooperation in Respect of Inter-country Adoption.

Child abuse and neglect

46. The Committee is concerned by practices of abuse, including sexual abuse, in the family.

47. In light of article 19 of the Convention, the Committee urges the State party to end practices of sexual abuse through, *inter alia*, monitoring, reporting, use of the criminal justice process to prosecute adults guilty of such abuse, and through information campaigns targeting parents, communities and children. The Committee also recommends that instances abuse and neglect of children be properly investigated within a child-sensitive inquiry and judicial procedure in order to ensure better protection of child victims, including the protection of their right to privacy. Measures should also be taken to provide support services to children in legal proceedings, and for the physical and psychological recovery and social reintegration of the victims of rape, abuse, neglect, ill-treatment and violence, in accordance with article 39 of the Convention.

D6. Basic health and welfare (arts. 6; 18, para. 3; 23; 24; 26; 27, paras 1-3)

Health

48. The Committee notes with deep concern the poor health situation of children in the State party, the very limited access of most children to adequate health care, including

mental health care, and very the high rates of maternal and infant mortality, the high percentage of children suffering from malnutrition, the low level of breastfeeding and the lack of an adequate family planning policy. The Committee is concerned, in particular, by weaknesses in health infrastructure, including a lack of appropriate equipment within many health centres, the limited quality of services and low immunisation rates.

49. The Committee recommends that the State party improve the access of children and mothers to health care, including primary and mental health care, to continue and strengthen its vaccination campaign, and to develop and implement a clear health policy with regard to children including, *inter alia*, the promotion of breastfeeding, the implementation of adequate family planning programmes and action to reduce and prevent malnutrition. The Committee recommends that the State party seek assistance from UNICEF and WHO in his regard.

Children with disabilities

50. The Committee is deeply concerned by the very high numbers of children with preventable and other disabilities, and the fact that these figures are increasing. Noting the very small number of children with disabilities (as indicated by the State party in its written answers to the Committee's list of issues) who have access to education, the Committee is deeply concerned that the rights of children with disabilities to education, as well as health, services are not respected and that they do not receive adequate assistance toward future development. The Committee, further, joins the State party in expressing concern at the interpretation of disabilities on the basis of some traditional opinions and that children with disabilities suffer from discrimination as a result of such traditional beliefs (see paragraph 140 of the State party report). The Committee is concerned, also, at reports of violence against children with disabilities in State institutions.

51. The Committee recommends that the State party develop and implement measures to guarantee respect for the rights of children with disabilities including, *inter alia*, improving their access to health and education services and vocational training. In addition, the Committee recommends that the State party make every effort to ensure that children with disabilities are not discriminated against including through the provision of ap-

propriate education for parents, teachers, children and members of the population in general. The Committee recommends that the State party strengthen mechanisms to protect children with disabilities and living in institutions from acts of violence. The Committee recommends that the State party provide assistance to NGOs working on behalf of children with disabilities, and promote co-ordination of their activities. The Committee recommends that the State party take note of, and strengthen its efforts through, the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly Resolution 48/96) and the Committee's recommendations adopted at its General Day of Discussion on the Rights of Children with Disabilities (CRC/C/69). The Committee recommends that the State party seek technical assistance from, *inter alia*, WHO and UNICEF.

HIV/AIDS

52. The Committee is deeply concerned by the very high number of children affected by HIV/AIDS through, *inter alia*, direct infection, including mother to child transmission, or following the illness or death of a parent. The Committee is also concerned by provisions in the criminal code banning contraception given the growing need to prevent transmission of HIV/AIDS.

53. The Committee recommends that the State party make every effort to reduce the incidence of HIV/AIDS by preventing its transmission among the population through, *inter alia*, the procurement of suitable medication, a review of legislation, including the repeal of article 178 of the criminal code and suitable prevention campaigns. The Committee recommends, further, that the State party provide assistance to children and their families affected by HIV/AIDS. The Committee recommends that assistance be sought from UNICEF and WHO in this regard.

Adolescent health

54. The Committee notes with deep concern the decline in access to health services, including mental and reproductive health services, for adolescents and the lack of information on adolescent health problems. The Committee is concerned by levels of HIV/AIDS among adolescents, sexually transmitted diseases and reports of high levels of early pregnancy.

55. The Committee recommends that the State party strengthen its efforts to provide adolescents with easy and adequate access to all child-friendly health care services they may need, including mental and reproductive health services and to make an assessment of adolescent health problems in order to develop and implement a comprehensive policy in this regard. The Committee recommends that the State party seek assistance from the United Nations Population Fund, the World Health Organisation and UNICEF.

Harmful traditional practices

56. The Committee is concerned by:
a) the practice of female genital mutilation in some areas
b) by certain food taboos such as those that forbid certain essential food items from children's and mother's diets.

57. The Committee recommends:
a) in light of article 24 of the Convention, that the State party prohibit, and take action to end, the practice of female genital mutilation and raise awareness of its harmful effects.
b) that the State party eliminate harmful food taboos, *inter alia*, by promoting awareness about their detrimental effects on the health of children and women.
c) that the State party seek assistance from WHO and UNICEF in this regard.

Standard of living/Social security

58. The Committee is concerned that the overall standard of living of many children is very poor, in particular with regard to access to clean water, food, adequate housing and sanitation. The Committee is concerned, in addition, that current social security provisions cover only a very small proportion of the population and that the parents and children most in need of such assistance are not covered by social security.

59. The Committee recommends that the State party take steps to improve the standard of living of children, giving particular attention to water, food, housing and sanitation concerns. The Committee recommends that the State party consider ways of extending social security coverage to a much broader proportion of the population and of ensuring the access of all children to social welfare assistance.

D7. Education, leisure and cultural activities (arts. 28, 29, 31)

60. The Committee is deeply concerned that the education objectives of the 1992 Plan of Action for the Survival and Protection of mothers and children are far from being achieved. The Committee is greatly concerned at the high numbers of children who never attend school or who drop-out early from their formal education. The Committee is concerned, further, that law number 86/005 of the 29 September 1986 relative to national education has not yet entered into force, with a negative impact on children's access to education. In addition, the Committee is concerned that in practice primary education is not free and that many parents have to pay school fees as well as related costs such as uniforms and equipment, which remain too expensive for most families. While noting the efforts made by the State party, the Committee, nevertheless, remains deeply concerned by the low rate of school enrolment of girls, their high drop-out rate and also the high female illiteracy rate, especially in rural areas. The Committee is also concerned that some girls are the victims of sexual harassment by teachers. The Committee is concerned, further, that school infrastructure and equipment remains largely insufficient, that the quality of education is poor, that teachers are not well trained and that some students are required to pay teachers for their grades.

61. The Committee urges the State party to adopt and implement legislation establishing a minimum age of compulsory education and providing for genuinely free primary and, as far as possible, secondary education, with emphasis on assisting children from the most disadvantaged backgrounds. The Committee recommends that the State party implement measures to increase enrolment and reduce the drop-out rate of children in school. The Committee recommends that the State party strengthen efforts to improve the access of girls to education, including by establishing specific programmes to reduce female illiteracy and information campaigns promoting the this right. The Committee recommends that the State implement measures to end the sexual harassment of girls in school. The Committee recommends that the State party pursue efforts to improve the quality of education and strengthen educational infrastructure throughout the State party including through improvements to teacher training, the introduction of human rights education and education for peace, building additional

classrooms and more schools, and by providing free transport to schools for children who live far away. The Committee recommends that the State party seek assistance from UNICEF and UNESCO in this regard.

D8. Special protection measures (arts. 22, 38, 39, 40, 37 (b)-(d), 32-36)

Refugees and internally displaced persons

62. While recognising the State party's assistance to very large numbers of refugees, the Committee remains deeply concerned by grave violations of the rights of refugee children and their families and, in particular, by widespread massacres of tens of thousands of refugees, particularly during 1997, in the eastern region of the State party and the State party's lack of co-operation with, and obstruction of, efforts by the United Nations investigative mission mandated to clarify such allegations. The Committee is concerned that the situation of refugee children and their families within the State party remains poor. The Committee is deeply concerned, in addition, at the very high numbers of children and their families internally displaced within the State party as a result of the armed conflict. The Committee is concerned, *inter alia*, by the separation of children from their families, and at the very limited access of displaced children to adequate food and to health and education services.

63. The Committee recommends that the State party strengthen its efforts to provide adequate assistance to refugees and that every effort be made to prevent all forms of violence against refugee and internally displaced children and to investigate and seek justice with regard to allegations of massacres of refugee children and their families. The Committee recommends that the State party urgently implement measures to protect civilian populations from further internal displacement, to ensure that those children and their families already displaced have access to food, education and health assistance, and to support the return home of internally displaced populations and their re-integration into their communities. The Committee recommends that the State party make every effort to respect and implement the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2). Noting the ongoing efforts, the Committee urges the State party to continue to give particular attention to strengthening family reunification efforts. The Committee recommends that the State party

work closely with UNHCR and UNICEF in this regard.

Children in armed conflict

64. The Committee is deeply concerned by the direct and indirect impact of the armed conflict on almost all children in the State party. The Committee is concerned at the deliberate killing of children by armed forces of the State party, armed forces of other State parties that have participated in the conflict and by armed groups, and by the continuing impunity for such acts constituting very serious violations of children's rights. The Committee is concerned, *inter alia*, by the recruitment and use of children as soldiers by the State party and by other actors in the armed conflict, including children under 15. The Committee notes with appreciation the creation of a special bureau for the demobilisation and re-integration of child soldiers (DUNABER) but is concerned by the effectiveness of this bureau.

65. The Committee urges the State party to strengthen its efforts to end the armed conflict and to ensure that the protection and promotion of children's rights are given due consideration in the ongoing peace process. The Committee urges the State party to prevent the killing, or other forms of harm, of children and to ensure the criminal prosecution of those persons responsible for committing such acts. The Committee further urges the State party to prevent the participation of children in armed conflicts and to end entirely their recruitment and use as soldiers, including cross-border recruitment, and to make additional efforts to demobilise and reintegrate present and former child soldiers into their communities and to provide for their psychological recovery. The Committee recommends that DUNABER be provided with sufficient human and financial resources to effectively demobilise and reintegrate children in society and to provide the necessary follow-up.

Child labour

66. The Committee joins the State party in expressing concern at the prevalence of child labour especially in informal sectors which frequently fall outside of the protections afforded by domestic legislation (see paragraph 87 of the State party report). The Committee is deeply concerned by the use of children to work in the KasaÔ mines, in locations in Lubumbashi and in other dangerous work environments.

67. The Committee recommends that the State party make every effort to end child labour, including through the dissemination of children's rights to employers, parents, the public in general and to children themselves. The Committee recommends, in particular, that the State party implement measures to enforce domestic legal protections in both the formal and informal work sectors, including in mines and other harmful environments, and that help be sought from ILO and UNICEF in this regard. The Committee notes the State party's commitment to complete ratification of ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour and recommends that this process be completed and that the State party also ratify ILO Convention No. 138 concerning the Minimum Age for Admission to Employment.

Trafficking/Sexual exploitation

68. The Committee is deeply concerned by information, included for example in the State party report, of the trading, trafficking, kidnapping and use for pornography of young girls and boys within the State party, or from the State party to another country, and that domestic legislation does not sufficiently protect children from trafficking.

69. The Committee strongly recommends that the State party take urgent measures to end the sale, trafficking and sexual exploitation of children through, *inter alia*, the adoption and implementation of appropriate legislation and the use of the criminal justice process to sanction those persons responsible for such practices. The Committee recommends that the police force and border officials receive special training to help in combating the sale, trafficking and sexual exploitation of children, and that programmes be established to provide assistance, including health care and rehabilitative and social reintegration assistance, to the child victims of sexual exploitation. The Committee recommends that the State party take into account the recommendations formulated in the Agenda for Action adopted at the 1996 Stockholm World Congress against Commercial Sexual Exploitation of Children and to raise the age for protection against commercial sexual exploitation to 18 years. The Committee recommends that the State seek technical assistance from UNICEF in this regard.

Children living in and/or working on the street

70. The Committee is concerned by the high number and difficult situation of children living in and/or working on the street. The Committee is concerned, *inter alia*, by the lack of access of these children to food, health and education services and by the exposure of these children to several risks including those related to substance abuse, violence, sexually transmitted illnesses and HIV/AIDS. The Committee is concerned, in addition, at a tendency for these children to be treated as delinquents by the criminal justice system

71. The Committee urges the State party to strengthen its assistance to children living in and/or working on the street, through, *inter alia*, studying the causes and implementing preventive measures, improving the protection of children already in this situation including through the provision of education, health services, food, adequate shelter and through programmes to assist children in leaving street life. The Committee urges the State party to ensure that children living/working on the street are not treated as delinquents for acts such as their presence in the street or begging.

Substance abuse

72. The Committee is concerned by the numbers of children abusing substances, such as through inhaling solvents and the use of cannabis.

73. The Committee recommends that the State party implement measures to prevent substance abuse by children including through the prevention of the sale of such substances to children and through addressing factors leading to vulnerability. The Committee recommends that the State party, *inter alia*, pursue its efforts to use information campaigns to alert children and adults to the risks of substance abuse (see paragraph 202 of the State party report) and that the child victims of substance abuse be provided with appropriate care, rehabilitation and assistance towards their social re-integration.

Juvenile justice

74. The Committee joins with the State party in expressing serious concern at the overall application of juvenile justice, the need for a review of domestic legislation with regard to juvenile justice, and concern that decisions

affecting children are taken by judges with insufficient knowledge of children's rights (see, for example, paragraphs 94 and 185 of the State party report). The Committee is concerned, in addition, at the ordering of the detention of minors by judicial police officers in contravention of the State party's judicial procedures (see paragraph 186 of the State party report). The Committee is concerned, further, at the limited number of sanctions available to judges and the consequent over-emphasis on deprivation of liberty as a sanction. The Committee is concerned at the very poor conditions of detention and reports of the ill-treatment of children. The Committee is deeply concerned that children aged 16 and 17 are considered as adults for the purposes of criminal responsibility. Further, the Committee expresses its concern that children aged 16 or above can, and have been, sentenced to the death penalty and, while recognising the Presidential pardon recently accorded to children sentenced to death, the Committee notes that such a sentence is a violations of the Convention's article 37 (a). The Committee is concerned, further, that child civilians and child soldiers are brought before military courts and that such courts do not guarantee international judicial protections, such as the right to appeal.

75. Noting the State party's ongoing efforts, the Committee recommends the implementation of a comprehensive reform of the administration of juvenile justice. The Committee recommends, in particular, that the State party adopt appropriate amendments to domestic legislation with regard to juvenile justice, toward ensuring full compliance with international standards and in particular articles 37, 40 and 39 of the Convention, as well the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines). The Committee recommends that the State party provide appropriate training for, *inter alia*, judges and lawyers. In particular, the Committee recommends that the State party proceed with its intention, as described in paragraph 185 of its initial report to the Committee, to broaden the range of possible sanctions so that deprivation of a child's liberty is used only as a measure of last resort. The Committee recommends that improvements be made to conditions in places of detention and imprisonment in which children are held. The Committee urges the State party to guarantee the application of juvenile justice provisions to all persons aged

under 18 in accordance with international standards. In particular the Committee urges the State party to ensure respect for article 37 (a) of the Convention and that no persons under-18 be sentenced to the death penalty or life imprisonment without possibility of release. The Committee urges the State party, in keeping with its ban on the recruitment of children as soldiers, to ensure that no child is tried by a military tribunal.

Ratification of the 2 optional protocols

76. Noting the State party's signature of the Optional Protocol, to the Convention on the Rights of the Child, on the Involvement of Children in Armed Conflicts, the Committee recommends that the State party proceed with efforts to ratify this instrument, as well as the Optional protocol on the Sale of Children, Child Prostitution and Child Pornography.

Dissemination of the report, written answers, concluding observations

77. The Committee is concerned that the State party has not disseminated widely its initial report to the Committee and that public access to the report has not been easy.

78. In light of article 44, paragraph 6, of the Convention, the Committee recommends that the initial report and written replies submitted by the State party be made widely available to the public at large and that the publication of the report be considered, along with the relevant summary records and concluding observations adopted thereon by the Committee. Such a document should be widely distributed in order to generate debate and awareness of the Convention and its implementation and monitoring within the Government, the Parliament and the general public, including non-governmental organizations.

The World Organisation Against Torture (OMCT) wishes to extend its gratitude for its support to the Children's Programme to:

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